

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROBERT GONZALEZ,

Plaintiff,

v.

NO. 1:94CV15-S-D

LARRY GUYTON,

Defendant.

OPINION

In May, 1995, a jury determined that defendant violated plaintiff's constitutional rights and awarded plaintiff \$5,000.00 in actual damages and \$2,500.00 in punitive damages. The court subsequently denied defendant's motion for judgment notwithstanding the verdict and for new trial, and plaintiff then moved for an award of attorney's fees under 42 U.S.C. § 1988. Although three months have passed since this latter motion was filed, defendant has offered no opposition, and the court is now prepared to rule on plaintiff's request.

Plaintiff was represented in this matter by Honorable Jim Waide. He has requested fees in the amount of \$13,357.50, which represents 1,559.25 hours of work by fifteen attorneys and paralegals billed at rates of \$50.00 to \$105.00 per hour.¹ Spruill

¹The municipal defendants have not requested reimbursement of expenses in their motion for sanctions, although their counsel's time sheets clearly reflect that expenses were incurred

has requested fees and expenses in the amount of \$27,608.66 (\$26,299.23 for attorney's fees--325.4 hours at \$75.00 per hour-- and \$1,309.23 for expenses).² Counsel have submitted the requisite affidavits discussing the applicability of the Johnson factors to the instant case and a detailed account outlining the hours expended on the defense of their respective clients and the tasks performed. The municipal defendants have also presented affidavits from several local attorneys who opined that hourly rates between \$75.00 and \$105.00 are reasonable for defending this type of lawsuit. As noted, Navarro and Chesteen demand that counsel's hours be substantially slashed or completely disallowed on the grounds that defendants failed to request sanctions in a timely manner or to mitigate their fees and that the amount requested serves only to punish, not to deter.

In determining a reasonable attorney's fee, the court must first calculate the "lodestar" by multiplying the number of hours reasonably spent on the litigation times a reasonable hourly billing rate. Watkins v. Fordice, 7 F.3d 453, 457 (5th Cir. 1993). The court should consider the twelve Johnson factors³ "when

in the defense of this case.

²This total is somewhat lower than that stated by Spruill in his motion and reflects a \$10.00 addition error on the time sheets for November, 1988 through April, 1989, and a disallowance by the court of deposition costs in the sum of \$1,954.35. That sum is not a covered expense but rather falls under the cost provisions of 28 U.S.C. § 1920.

³Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). Because these factors are well known to

analyzing the reasonableness of the hours expended and the hourly rate requested." Watkins, 7 F.3d at 457. Once the lodestar is determined, it may be adjusted, either upwardly or downwardly, "if the Johnson factors, not included in the reasonable fee analysis, warrant the adjustment." Id. However, the lodestar is presumed reasonable and should be modified only in the exceptional case. Id.

In determining the nature and extent of the attorney's services, the Fifth Circuit's discussion of the first Johnson factor--the time and labor required--is instructive:

It is appropriate to distinguish between legal work, in the strict sense, and investigation, clerical work, compilation of facts and statistics and other work which can often be accomplished by non-lawyers but which a lawyer may do because he has no other help available. Such non-legal work may command a lesser rate. Its dollar value is not enhanced just because a lawyer does it.

Johnson, 488 F.2d at 717. In Coalition to Preserve Houston v. Interim Board of Trustees of the Westheimer Independent School District, 494 F. Supp. 738 (S.D. Tex. 1980), appeal dismissed, 450 U.S. 901 (1981), the district court expanded on this concept, stating:

The Court distinguishes three categories of the type of work performed: (1) strictly legal activities, which include legal research, writing, and court appearances; (2) legally related activities, which include conferences, telephone calls, and other correspondences; and (3) routine administrative activities, which include

every practicing attorney in this circuit, the court finds no reason to enumerate them here; each factor will be considered in due course.

travel time, clerical work, and compilation of facts and statistics. For purposes of the application of different rates to different types of work, the first category will be referred to as work on the merits of the case; the second category will be called informal communications; and the third category will be referred to as non-legal work.

Id. at 745 -46.⁴ Furthermore, fees should not be allowed for hours which were not reasonably expended, i.e., hours which are excessive, redundant, unnecessary, or inadequately documented. Hensley v. Eckerhart, 461 U.S. 424, 432-34 (1983).

In light of the above authorities and this court's experience, the court makes the following conclusions as to each attorney and

⁴This approach has been adopted by this court in past decisions. For example, in Shirley v. Chrysler First, Inc., 763 F. Supp. 856 (N.D. Miss. 1991), aff'd, 970 F.2d 39 (5th Cir. 1992), this court categorized plaintiff's requested attorney's fees and elaborated on the Texas court's guidelines:

Work on the merits entails drafting motions, responses, and a memorandum; legal research and brief writing; preparation of clients for and personal participation in depositions; and conferences with the court. Informal communications are comprised of conferences with opposing counsel, clients, and witnesses; all correspondence involving defense counsel...or the court; and review of motions, responses, orders, [and] opinions....Other than travel, Category 3 is preparation of notices and cover letters, normally performed by a secretary; and review of a cancellation of a pre-trial conference, a simple scheduling matter.

Shirley, 763 F. Supp. at 858 n.3 (quoting Cobbs v. Grenada County, Mississippi, No. WC84-136-S-0, at 12 n.17 (N.D. Miss. Sept. 13, 1989) (unreported opinion)). This method of calculating attorney's fees was recently approved by the Fifth Circuit in Watkins. See Watkins, 7 F.3d at 459 (citing Johnson and Shirley).

paralegal employed by the municipal defendants:

(1) Beginning with Siler, of the 284.5 hours listed, 102.5 hours fit within Category One; 54.25, within Category Two; and 30.5 hours, within Category Three. The court has disallowed 97.25 hours as excessive, redundant, or unnecessary.

(2) Of the 479.25 hours listed by Gault, 163.5 hours fit within Category One; 115.5 hours, within Category Two; and 30.5 hours, within Category Three. The court has disallowed 169.75 hours as excessive, redundant, or unnecessary.

(3) Of the 109.0 hours listed by Victoria Jenkins, 30.75 hours fit within Category One; 39.75, within Category Two; and 5.75 hours, within Category Three. The court has disallowed 32.75 hours as excessive, redundant, or unnecessary.

(4) As to the 29.0 hours listed by F. Corley, 22.0 hours fall in Category One, with 7.0 hours disallowed as excessive, redundant, or unnecessary.

(5) Of the 8.75 hours listed by D. Thomas, 3.0 hours fit within Category One and .5 hours within Category Two, with 5.25 hours disallowed as excessive, redundant, or unnecessary.

(6) Of the .5 hours listed by D. Mockbee, .25 hours fall in Category Two, with .25 hours disallowed as excessive, redundant, or unnecessary.

(7) Of the 3.5 hours listed by W. Selph, 1.25 hours fit within Category One and .25 hours fit within Category Two. The court has disallowed 2.0 hours as excessive, redundant, or unnecessary.

(8) The court has completely allowed the 2.00 hours listed by G. Friedman and the .5 hours listed by S. Fahey. Both amounts fit in Category Two.

(9) As to the 642.25 hours expended by the six paralegals who worked on this case, the court has allowed 423.5 hours as reasonable, with 218.75 hours disallowed as excessive, redundant, or unnecessary.

As to Spruill's attorney, Rogers, the court finds that of the 325.4 hours listed, 151.5 hours fall within Category One; 90.1

hours, within Category Two; and 11.1 hours, within Category Three. The court has disallowed 72.7 hours as excessive, redundant, or unnecessary.

The court has made such deep cuts in everyone's hours not only because the time devoted to this case was unreasonable under Johnson but also because under Thomas, the non-violating parties have a duty to mitigate "by correlating [their] response, in hours and funds expended, to the merit of the claims." Thomas, 836 F.2d at 879. Although the court finds that notice of the Rule 11 violations were adequately timely and that defendants did all they could to bring the violations to the attention of Navarro, Chesteen, and Raines, it does not believe defendants properly mitigated their expenses under Thomas. The court appreciates defense counsel's obligations to represent their clients vigorously; however, this cause was factually and legally frivolous from its inception, a circumstance which became clearer as the case progressed. In this court's eyes, it was therefore unreasonable and unnecessary to expend over eighteen hundred hours and to utilize ten attorneys and at least six paralegals to defend this suit.

Therefore, giving due consideration to the time and labor involved, the customary fee, the amount involved and the results obtained, the skill required to defend this case, the experience, reputation and ability of the attorneys, and the novelty and complexity of the issues presented, the appropriate lodestar for

each attorney involved is as follows:

(1) Siler--

102.50 hours	x	\$95.00 per hour	=	\$ 9,737.50
54.25 hours	x	\$70.00 per hour	=	3,797.50
30.50 hours	x	\$45.00 per hour	=	<u>1,372.50</u>
				\$14,907.50.

(2) Gault--

163.50 hours	x	\$90.00 per hour	=	\$14,715.00
115.50 hours	x	\$65.00 per hour	=	7,507.50
30.50 hours	x	\$40.00 per hour	=	<u>1,220.00</u>
				\$23,442.50.

(3) Jenkins--

30.75 hours	x	\$90.00 per hour	=	\$2,767.50
39.75 hours	x	\$65.00 per hour	=	2,583.75
5.75 hours	x	\$40.00 per hour	=	<u>230.00</u>
				\$5,581.25.

(4) F. Corley--

22.00 hours	x	\$80.00 per hour	=	\$1,760.00.
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(5) D. Thomas--

3.00 hours	x	\$95.00 per hour	=	\$ 285.00
.50 hours	x	\$70.00 per hour	=	<u>35.00</u>
				\$ 320.00.

(6) D. Mockbee--

.25 hours	x	\$70.00 per hour	=	\$ 17.50.
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(7) W. Selph--

1.25 hours	x	\$75.00 per hour	=	\$ 93.75
.25 hours	x	\$50.00 per hour	=	<u>12.50</u>
				\$ 106.25.

(8) G. Friedman--

2.00 hours	x	\$70.00 per hour	=	\$ 140.00.
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(9) S. Fahey--

.50 hours	x	\$70.00 per hour	=	\$ 35.00.
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(10) T. Buie, P. Ellis, J. Giddens, V. Parker, R. Spencer, R. Tominello (paralegals)--

423.50 hours x \$40.00 per hour = \$16,940.00.

(11) Rogers--

151.50 hours x \$75.00 per hour =	\$11,362.50
90.10 hours x \$50.00 per hour =	4,505.00
11.10 hours x \$25.00 per hour =	<u>277.50</u>
	\$16,145.00.

These calculations result in a total award of \$63,250.00 to the municipal defendants and \$16,145.00 to Spruill. Although no defendant has requested an enhancement in this case, the court has considered the remaining Johnson factors--preclusion of other employment, imposed time limitations, and undesirability of the case--and finds that none of these factors warrant any upward adjustment in the lodestar. Finally, the court's award in the instant case is in line with awards in similar cases. See, e.g., Mississippi State Chapter Operation PUSH v. Mabus, 788 F. Supp. 1406 (N.D. Miss. 1992) (allowing rates ranging from \$80.00 - \$115.00 for attorneys with varying levels of experience and \$35.00 for paralegals); Shirley v. Chrysler First, Inc., 763 F. Supp. 856 (N.D. Miss. 1991) (allowing hourly rates of \$90.00 and \$125.00); Martin v. Mabus, 734 F. Supp. 1216 (S.D. Miss. 1990) (allowing hourly rates of \$75.00 - \$100.00); Beamon v. City of Ridgeland, 666 F. Supp. 937 (S.D. Miss. 1987) (allowing hourly rates of \$65.00 - \$100.00).